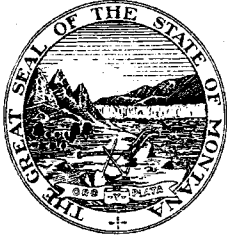


DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

Trust Land Management Division



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STATE EXAMINATION

EXHIBIT NO. 5

DATE 3-14-11

FILE NO. 58403

1625 ELEVENTH AVENUE

PO BOX 201601
HELENA, MONTANA 59620-1601

March 4, 2011

MEMORANDUM

TO: Mary Sexton, Director
Joe Lamson, Deputy Director
Tom Schultz, TLMD Administrator

FR: Monte Mason, MMB Chief
Tommy Butler, Trust Lands Legal Counsel

RE: Reliance Refinery/Kalispell Pole & Timber State Superfund Site

The State acquired a parcel of land in Kalispell and, for many years leased the property for an oil refinery. Acreage adjacent to the state parcel was used for treating timber with a wood preservative - pentachlorophenol. Contamination of the soil by the wood preservative caused the site to be designated a state superfund site. In State ex rel. Department of Environmental Quality v. Burlington Northern and Santa Fe Railway Corporation, et al. Cause No. BDV-2004-596, Montana First Judicial District Court, the department entered into a Court-approved Consent Decree which obligated DNRC to "pay twenty seven and one-half percent (27.5%) of all future remedial action costs at the facilities until such time as all required remedial actions at the facilities are complete and the facilities are removed from the CECRA Priority List".

By accepting the terms of the Consent Decree, DNRC obtained legal immunity under Section 75-10-719, MCA, from any contribution actions that could be brought by other potentially liable parties. This is a valuable right and provided a considerable inducement to enter into the Consent Decree. The current estimate for remediation of the Reliance Refinery - Kalispell Pole & Timber site is \$32 million, with the state's share constituting \$8.8 million. Under the terms of the settlement agreement, the state is obligated to pay its share of costs as they are incurred.

Failure to comply with the terms of the Consent Decree would subject DNRC to a \$1,000 per day civil penalty and, if legal enforcement was necessary to enforce the Consent Decree, DNRC would be liable for the payment of attorneys fees. In addition, if the Consent Decree is breached, the court could revoke the state's immunity from cross-claims by other liable parties. If so, the state would remain responsible for its share of costs and would likely face additional liability based on these cross-claims and contribution actions.